Intellectual Property

Intellectual Property and Intellectual Property Protection

1. Why do I need IP protection and what value does IP protection bring to my business?

Intellectual Property (IP) rights protect the ideas and creations that originate from your business. These include patents, copyrights, trademarks, and trade secrets (explained further in Question 3).

IP protection adds value by:

- Preventing others from using your creations without permission.
- Helping you maintain a competitive edge.
- Allowing you to generate income through licensing or selling your IP rights.

2. When do I need to start thinking about Intellectual Property (IP) protection?

It's best to start thinking about Intellectual Property (IP) protection early—ideally before you share your ideas publicly or begin working with outside partners.

Consider IP protection:

- Before engaging with manufacturers or vendors.
- Before launching your brand or product publicly.
- At every stage of your business, including growth and expansion, to prevent competitors from using your inventions or branding.

3. What is the difference between a patent, a trademark, a copyright, and a trade secret?

Intellectual Property (IP) includes several types of protections, each covering different kinds of creations:

- **Patent:** Protects new and useful inventions—such as devices, processes, methods, pharmaceutical compounds, or product designs.

- **Trade secret:** Protects confidential business information, such as formulas, manufacturing methods, or customer lists, as long as the information remains secret.
- **Trademark (or service mark):** Protects the names, logos, or symbols that identify your business's goods or services.
- **Copyright:** Protects original works of expression, like written content, music, software code, or artwork.

What can be protected by each IP right?

Each type of Intellectual Property (IP) right protects different aspects of your business:

- **Patents:** Prevent others from making, using, selling, or importing your invention without permission.
- **Trade secrets:** Protect confidential business information from being disclosed or used by others.
- **Trademarks:** Stop others from copying your brand's identifying features, such as your name, logo, or slogan.
- **Copyrights:** Prevent others from using or reproducing your original creative works, like websites, graphics, or written content.

How long does the protection last for each IP right?

The duration of protection varies depending on the type of Intellectual Property (IP):

- **Utility patents:** Last up to 20 years from the filing date, provided maintenance fees are paid.
- **Design patents:** Typically last 15 years from the date of grant.
- **Trade secrets:** Can last indefinitely, as long as the information remains confidential.
- **Trademarks:** Do not expire, but must be actively used and periodically renewed to remain valid.
- **Copyrights:** Generally last for the life of the author plus 70 years.

4. Do I own the rights to my IP?

In some cases, Intellectual Property (IP) rights automatically belong to you when the work is created. However, ownership can be affected by:

- Employment agreements or contracts that assign IP rights to your employer.
- Independent contractor or consulting agreements that define who owns the resulting work.
- The need to register certain rights—like patents—before they are legally recognized.

Always review your contracts and agreements to understand who owns the IP and whether you're required to transfer those rights.

I currently work at a Company, but I have an idea that I want to patent. Can I patent my idea or does the Company own the rights to my idea?

It depends on the circumstances. If your idea is related to your job duties or the company's business, the company may have a legal claim to the invention. This is especially true if you used company resources—like tools, materials, or equipment—to develop it.

To determine ownership, you'll need to:

- Review your employment agreement and any IP-related policies.
- Consider whether the invention was created on company time or using company assets.

A legal review of your specific situation is recommended before moving forward with a patent application.

I hired a designer to help me with my brand – do I own the designer's work?

It depends on the arrangement. If the designer is your employee, the work may be considered a "work for hire," meaning you likely own the rights—especially for copyrights. However, if the designer is an independent contractor, ownership may remain with them unless a written agreement says otherwise.

Trademark rights can be more complex and may not automatically transfer. To avoid confusion:

- Use a written agreement that clearly states who owns the rights to the work.
- Finalize this agreement before any design work begins.

I hired a designer to help model my invention – are they an inventor?

Not necessarily. If the designer simply follows your instructions to create a model, they are usually not considered an inventor. However, if the designer contributes original ideas or inventive features to the concept, they may have a right to be listed as a co-inventor.

In patent law, inventorship is based on the claims in the patent application. If a person's contribution is not reflected in those claims, they are not considered an inventor—even if they helped during development.

5. Can I sell my IP rights?

Yes, many types of Intellectual Property (IP) rights can be sold, transferred, or licensed. For example:

- Patents and trademarks can be sold as part of your business assets.
- Licensing allows others to use your IP while you retain ownership

6. Do I need any agreements, and if so, what kind of agreements do I need? (Non-Disclosure Agreement (NDA), Joint-Development Agreement (JDA), etc.)?

Having the right agreements in place is essential to protect your Intellectual Property (IP). The type of agreement you need depends on the situation:

- Non-Disclosure Agreements (NDAs): Crucial for protecting trade secrets and preventing early disclosures of inventions. They should always be used when you are disclosing confidential information.

- Employment or Contractor Agreements: Should include IP clauses that clarify ownership of work created during the engagement.
- Joint-Development Agreements (JDAs): Useful when two or more parties are collaborating on a new invention or product.

These are just a handful of the various types of agreements you may need. The proper agreements help avoid misunderstandings and can ensure your rights are clearly defined from the start.

7. Do I need to do a patent/trademark search before applying for a patent or a trademark?

While not legally required, conducting a search before applying for a patent or trademark is highly recommended. It can help you avoid costly mistakes and delays.

- Trademark searches can identify existing marks that may conflict with yours. This allows you to adjust your branding before investing time and money in an application.
- Patent searches can reveal similar inventions that may affect your ability to get a patent. They also help you focus your application on the truly novel aspects of your invention.

Keep in mind:

- If you conduct a patent search, you must disclose any relevant publications you find to the United States Patent and Trademark Office (USPTO).
- Maintain records of your search results and share them with your patent attorney or agent.

8. I already showed my invention and brand publicly (e.g., at a tradeshow, a competition, etc.) can I still patent my invention and trademark my brand?

In the United States, you have up to one year from the date of public disclosure to file a patent application. Public disclosure may include:

- Showing your invention at a tradeshow or competition.
- Offering it for sale—even if no physical product was displayed.

However, many other countries require that no public disclosure occurs before filing. If international protection is important to you, early filing is critical.

For trademarks, public use is often required before registration. You can typically register a trademark after you've started using it, and in some cases, the registration can reference the earlier date of first use.

9. How much does it cost to obtain a patent/trademark/copyright/trade secret?

The cost of protecting your Intellectual Property (IP) depends on the type of protection you're seeking. While each situation is unique, here are general estimates:

- **Patents:** Preparing, filing, and prosecuting a patent application can cost $20,000 or more. This includes drafting the application and responding to questions and examination from the United States Patent and Trademark Office (USPTO).

- **Trade secrets:** There's no registration fee, but you may incur legal costs to maintain secrecy—such as drafting Non-Disclosure Agreements (NDAs) and enforcing confidentiality with employees or contractors.
- **Trademarks:** Filing a trademark application typically starts around $2,500 and increases based on the number of product or service categories. Additional costs may arise if the USPTO raises objections or if third parties oppose your application.
- **Copyrights:** Registration usually costs around $500 for a single work.

10. Do I need to protect my IP worldwide?

No, you don't need to register your Intellectual Property (IP) in every country. Instead, focus on protecting your IP in the countries where you plan to manufacture, sell, or distribute your products or services.

Keep in mind:

- Patents and trademarks can help block the import of infringing goods—even from countries where you haven't registered your rights.
- Global registration can be expensive, so prioritize key markets.

If you want international protection, you can use global filing systems to simplify the process:

- Patent Cooperation Treaty (PCT) through the World Intellectual Property Organization (WIPO) for patents.
- Madrid Protocol for trademarks.

These systems streamline the filing process across multiple countries, but you'll still need to go through each country's review process to secure protection.

11. I have a couple of Patent-specific questions.

What is public disclosure/offer for sale?

In the United States, you must file a patent application either before publicly disclosing your invention or within one year of doing so. Public disclosure includes:

- Sharing non-confidential details about the invention.
- Offering the invention for sale—even if under a Non-Disclosure Agreement (NDA).

Can I use "Patent Pending"?

Yes. Once you file a patent application—either provisional or non-provisional—you can label your invention as "Patent Pending." This signals to others that you've started the patent process.

After your patent is granted, you can update the label to include the official patent number.

How long does it take to get a Patent?

The time it takes to get a patent approved in the U.S. varies based on:

- The type of patent (utility vs. design).
- The complexity of the invention.
- The workload of the assigned examiner at the United States Patent and Trademark Office (USPTO).

On average, the process takes 1 to 3 years, but it can take longer in some cases.

12. I have a couple of Trademark-specific questions.

Do I need to register my Trademark?

You're not required to register your trademark, but federal registration offers important benefits:

- You can use the ® symbol to show your mark is officially registered.
- You can record your trademark with U.S. Customs to block counterfeit imports.
- Registration helps prevent others from registering similar marks.
- It gives you the right to sue for infringement in federal court.
- It provides legal presumptions of ownership and nationwide protection.

Do I have to use my Trademark?

Yes, you generally must use your trademark in commerce to maintain protection. While you can apply for a trademark before using it, the registration won't be finalized until you show proof of use.

If you stop using your trademark for an extended period, your registration could be canceled.

When can I use the ® – symbol?

You can use the ® symbol only after your trademark is federally registered. Before registration, you can use:

- TM for goods.
- SM for services.

Using the ® symbol without registration is not allowed and could lead to legal issues.

How long does it take to get a Trademark?

A trademark application usually takes 12 to 18 months from filing to registration.

13. I have a couple of Copyright-specific questions.

Do I have to apply for a copyright?

No, you automatically receive copyright protection as soon as your original work is created and fixed in a tangible form (like writing, recording, or digital storage).

However, registering your copyright with the U.S. Copyright Office offers key benefits:

- You can sue for infringement in federal court.
- It creates a public record of your ownership.
- It provides legal advantages, such as a presumption of validity, if registered within a certain time frame.

How long does it take to get a Copyright registration?

It typically takes 3 to 9 months for the U.S. Copyright Office to process and issue a certificate of registration.

14. Can I get a Trade Secret and a Patent?

Generally, no—you can't protect the same invention as both a trade secret and a patent at the same time. That's because:

- Patents require public disclosure of the invention, which ends trade secret protection.
- Trade secrets rely on confidentiality and lose protection once the information becomes public.

However, there are exceptions:

- You can request that the United States Patent and Trademark Office (USPTO) not publish your patent application if you agree not to file internationally. This can delay public disclosure.
- If you abandon the patent application before it's published or granted, the invention may still qualify as a trade secret—if it has remained confidential.

1. Do I need contracts when I engage someone to help develop my product or service?

Yes, you should always have a written agreement in place when hiring someone to help develop your product or service. This ensures:

- Your company owns all intellectual property (IP) created.
- The relationship is clearly defined to avoid misclassifying a contractor as an employee.

Note: The "work for hire" doctrine doesn't always apply—especially for software or creative work done by contractors. Specific contract language is needed to secure IP ownership.

2. When I am ready to sell or license my product or service, what agreements do I need?

The agreements you need will depend on how you plan to sell or license your product or service. Common examples include:

- Terms of use or terms of service for websites or apps
- Purchase order (PO) terms for product sales
- Subscription or license agreements for SaaS or software
- Reseller or distributor agreements if third parties will sell your product

In all cases, make sure your contracts clearly define IP ownership and licensing terms. This helps prevent accidentally giving away more rights than intended.

3. Can I use third party AI or Open Source Software in my products?

Yes, but you need to carefully review the license terms before using third-party AI or open source software in your products.

- **For AI tools:** Understand how your data will be used, whether it will be used to train the model, and what rights the vendor has to your content.
- **For open source software:** Check for license terms that might require you to share your own source code or limit how you can monetize your product.

These issues can affect your product's legal compliance and business model.

4. Can I send marketing emails or texts to potential customers?

It depends on where your customers are located:

- **In the U.S.:** You can usually send marketing emails if you include an opt-out option. For text messages, you generally need express opt-in consent.
- **Outside the U.S.:** Many countries require opt-in consent for both emails and texts.

Always check local laws before launching a marketing campaign.

5. Do I need to have a privacy policy on my website or product?

Yes. If your website or product collects any personal information—such as a name, email, or IP address—you need a privacy policy.

- Make sure your policy covers both your website and your product (e.g., SaaS or mobile app).
- Some laws also require cookie notices or popups.
- Different states and countries have specific privacy rules, so your policy should reflect the laws that apply to your business.

6. Can I copy another privacy policy or a terms of use that is online and use that?

This is not a good practice.

- These documents must reflect your specific business practices and the laws that apply to you.
- Using a generic or mismatched policy could mislead users and expose you to legal risk.
- Inaccurate policies may be considered deceptive by the FTC or state regulators.

It's best to create custom documents tailored to your company's operations and legal obligations.